

dismissed vide order dated 11.12.202, hence, present bail application has been moved on behalf of applicant/accused.

2. Learned counsel for the applicant/accused, *inter alia*, contends that that name of the applicant/accused does not transpire in FIR; that no specific role has been ascribed to the applicant; no identification parade was held; that nothing has been recovered from the possession of the applicant, thus, case of the applicant falls within the purview of further inquiry as enumerated under Section 497(2), Cr.P.C; He prayed for grant of bail.

4. On the other hand, learned DPG assisted by learned counsel for complainant contends that during investigation applicant/accused was arrested by P.S Malir City in case bearing Crime No. 400/2020 under Section 395 PPC and upon coming to know about the arrest of police official, complainant went to the police station and identified the applicant/accused to be one of the accused of the instant offence; that applicant/accused is admittedly Head Constable in the Police Department, who knows the pros and cons of the act but even then he committed such a heinous offence and his such act has also tarnished the image of police in the eyes of public; that in statements recorded under Section 161 Cr.P.C., prosecution witnesses have fully supported the version of the complainant and the offence with which the applicant/accused is charged is falling under the prohibitory clause of section 497 Cr.P.C, therefore, he is not entitled for grant of bail at this stage.

5. Heard and perused the record.

6. In the present case, the complainant specifically mentioned in the FIR that 5/6 persons in police uniforms entered into his house and after making them hostages, they committed dacoity. Admittedly, the applicant/accused is a Head Constable in the Police Department and it has also come on record that he is also involved in another FIR bearing Crime No.400/2020 registered at P.S Malir City, Karachi for offence under

Section 395 PPC. It is further observed that prosecution witnesses have fully supported the version of the complainant in their statements under Section 161 Cr.P.C. It may be observed here that there is distinction between an offence committed by an individual in his private capacity and an offence committed by a public functionary for the purpose of bail. In the former cases, the practice to allow bail in cases not falling under prohibitory clause of section 497 Cr.P.C in the absence of an exceptional circumstance may be followed, but in the latter category, the Courts should be strict in exercise of discretion of bail. In the above category of the offenders belongs to a distinct class and they qualify to be treated falling within an exceptional circumstance of the nature warranting refusal of bail even where maximum sentence is less than 10 years' R.I for the offence involved provided the Court is satisfied that prima facie, there is material on record to connect the accused concerned with the commission of the offence involved.

7. None I would take an exception to the fact that such like offence does fall within the category of '**offence against society**'. Normally, bail is not to be granted to an accused for an ordinary offence *even* if such offence attracts the bar of Section 497(i) Cr.P.C unless he successfully brings his case within meaning of Section 497(ii) Cr.P.C. However, when the bail plea is in respect of an offence which falls both under category of '**offence against society**' as well attracts the bar, provided by **prohibitory clause of section 497(i) Cr.PC** then criterion to examine such a case would not be similar to examine an ordinary offence, falling within prohibitory clause. Reference may be made to the case of *Imtiaz Ahmed v. State* PLD 1997 SC 545 wherein it is observed as:-

'7. I may observe that a distinction is to be made between an offence which is committed against an individual like a theft and an offence which is directed against the society as a whole for the purpose of bail. Similarly, a distinction is to be kept in mind between an offence committed by an individual in his private capacity and an offence committed by a public functionary in respect of or in connection with his public office for the aforesaid purpose of bail. In the former cases, the practice to allow bail in cases not falling under prohibitory clause of section 497 Cr.P.C in the absence of an exceptional circumstances may be followed, but in the latter category, the Courts should be strict in exercise of discretion of bail. In my view, the above category of the offenders belongs to a distinct class and

they qualify to be treated falling within an exceptional circumstance of the nature warranting refusal of bail even where maximum sentence is less than 10 years' R.I for the offence involved provided the Court is satisfied that prima facie, there is material on record to connect the accused concerned with the commission of the offence involved.

8. In the above circumstances, prima-facie, there are reasonable grounds to believe that applicant/accused has committed alleged offence, therefore, I am of the considered view that applicant has failed to make out a case for further inquiry. The bail application being devoid of merits is **dismissed** accordingly.

9. Needless to mention that the above observations are purely tentative in nature and would not prejudice to the merits of the case.

JUD G E

Sajid

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Bail Application No. 80 of 2021

Date Order with signature of Judge

For hearing of bail application.

08th March 2021

Mr. Muhammad Akbar Awan, advocate for applicant/accused.
Mr. Faheem Hussain Panhwar, DPG.

Through instant bail application, applicant/accused Liaquat Ali Khan seeks post arrest bail in FIR No. 644/2020, for offences under Sections 395 PPC registered at P.S. Ibrahim Hyderi.

Precisely, the relevant facts as narrated in the FIR are that on 30.09.2020, complainant lodged FIR at police station Ibrahim Hyderi stating therein on 30.09.2020